ANG ENG CHAN v. PUBLIC PROSECUTOR

[F.C. (Ong Hock Sim, Raja Azlan Shah and Chang Min Tat F.JJ.) December 6, 1977]

[Penang — Federal Court Criminal Appeal No. 19 of 1977]

Criminal Law and Procedure — Charge under s. 58(1) of Internal Security Act — Consorting in security area with person in possession of firearms in circumstances raising reasonable presumption of intention to act in manner prejudicial to public security — No evidence that accused intended to act in prejudicial manner — Internal Security Act, 1960, s. 58(1) and (2).

The appellant had been convicted of an offence under section 58(1) of the Internal Security Act 1960 in that in a security area he consorted with a person in possession of firearms in such circumstances as to raise a reasonable presumption that he intended together with that other person to act in a manner prejudicial to public security. There was no finding by the learned trial judge that the accused intended to act in a prejudicial manner.

Held: the conviction under section 58(1) of the Internal Security Act must be set aside and a conviction under section 58(2) of Internal Security Act substituted for it, that is that the accused was in the company in a security area of a person who had under his control firearm and ammunition in circumstances giving rise to a reasonable presumption that he knew that person had under his control the firearm and ammunition.

FEDERAL COURT.

Appellant in person.

Mohamed Noor bin Haji Ahmad (Deputy Public Prosecutor) for the respondent.

Ong Hock Sim F.J. (delivering the judgment of the Court): The appellant was tried on three charges under the Internal Security Act, 1960 (Act 82 — Rev. 1972) in the High Court at Penang. He was acquitted on the first two charges but was convicted and sentenced under the third charge to imprisonment for life.

At the hearing, we inquired whether he would accept the services offered by a Penang practitioner to argue his appeal. He declined and said he would rely on his written submission, which he had tendered in before the hearing. We heard him and inquired if he had anything to add to that. There were three grounds of appeal, which said the judge was in error in attaching undue weight to the false number plates, spent cartridges and ball bearings found in the kitchen and acting on suspicion. We perused the record with care and were of the view that there was substance in his second ground that there was no evidence to support the charge under section 58(1) of the Act which reads:—

"That you jointly with Sim Ah Nom on the 17th day of October, 1976, at about 4.00 a.m. at house No. 1717, Siram Road, in the District of Butterworth, in the State of Penang, did without lawful excuse, in a security area, proclaimed by the Yang Dipertuan Agung vide Federal Gazette No. P.U.(A) 148 dated 15th May, 1969, consorted with one Ang Cheng Guan, who had in his possession firearms, to wit, (1) a .38 Smith & Wesson Special Revolver Serial No. 93679 (2) a Colt Super Automatic .22 Magnum and (3) a Shot Gun pistol, in contravention of section 57 of the Internal Security Act No. 82 (Revised — 1972), in such circumstances which raise a reasonable presumption that you together with the said Ang Cheng Guan intend to act in a manner prejudicial to public security, and you thereby committed an offence punishable under section 58(1) of the said Internal Security Act No. 82 (Revised — 1972)."

We have set out the charge. There must be proof of the circumstances to raise a reasonable presumption of intention to act with the other accused prejudicially to public security. The learned judge's findings were summed up in his judgment thus:—

(1) There is ample evidence appellant and the first accused were friends.

(2) The appellant gave the first accused shelter in his house.

(3) The first accused was carrying large weapons, namely, three guns.

(4) The first accused was not on a casual visit but "was staying there as a guest for a considerable period of time."

(5) The contents of the plastic bag were discernible and therefore the only inference which can be drawn, especially when accused No. 1 was staying with the accused (appellant) for a few days (not a considerable period of time) was (i) that the accused No. 2 (appellant) knew about the guns in accused No. 1's possession and (ii) knew the purposes for which they were being carried, viz, that together they intended to act in a manner prejudicial to public security.

But the learned judge did not come to any finding on the evidence that the accused intended to act in a prejudicial manner.

We are of the view that there can be little doubt that the appellant knew the accused No. 1 had the arms and ammunition and the proper charge should be under section 58(2) of being in the company, in a security area, of a person who had under his control firearm and ammunition in circumstances giving rise to a reasonable presumption that he knew that person had under his control firearm and ammunition.

The learned deputy conceded this and we accordingly set aside the conviction and sentence under section 58(1) and substituted therefor a conviction under section 58(2) and imposed a sentence of ten years' imprisonment with effect from the date of his arrest.

Order accordingly.

CHANG YUEN YIN v. CHIA SENG YOOK & ANOR.

[F.C. (Lee Hun Hoe C.J. (Borneo), Ong Hock Sim and Chang Min Tat F.JJ.) November 16 and December 16, 1977]

[Kuala Lumpur — Federal Court Civil Appeal No. 49 of 1977]

Land Law — Agreement for sale of land — Absence of sketch plan — Area not demarcated — Agreement void for uncertainty.

By an agreement of sale the respondents had agreed to convey to the appellants a portion of 5 acres of land "as per sketch plan coloured red attached hereto." No plan was in fact attached or could be found.

Held: (1) in the absence of the sketch plan and as the five acres were not demarcated, the agreement should be treated as void for uncertainty;

(2) in all the circumstances the *status quo* should be restored and the respondents should repay the sum paid by the appellant for the purchase of the land.